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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/824,188	04/02/2001	Zhijiang Wang	021169000500	8367

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EXAMINER

MENEFEE, JAMES A

ART UNIT	PAPER NUMBER
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2828

DATE MAILED: 03/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/824,188

Applicant(s)

WANG ET AL.

Examiner

James A. Menefee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.



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Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 April 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Response to Amendment

In response to the amendment filed 4 March 2003, claims 1-2 are amended. Claims 1-8 are pending.

Drawings

Figures 1-8 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 6 currently depends on claim 6. It is believed it should depend on claim 5. Correction is required.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

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improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 2-8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,101,199. Although the conflicting claims are not identical, they are not patentably distinct from each other. The present invention is broader in that it does not require the limitations of '199 drawn-to-axis divergence, however any patent granted on the present invention would extend the "right to exclude" granted by '199 because due to the use of "comprising", a patent on the present invention would provide for protection on items not necessarily included in the present invention, including said limitations drawn to the axis divergence.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this

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subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Po (US 6,516,124). Po discloses an optical fiber having a core 200 doped with an active species, an inner cladding 210 surrounding the core, an outer cladding 220 surrounding the inner cladding, where the cross sectional shape of the inner cladding 210 is an asymmetric and symmetry broken polygon. At least one boundary 211 of the boundaries forming the cross section of the inner cladding is an arc (see Fig. 3). While the figure shows the cross sectional shape to be symmetrical, Po states that additional shapes for the inner cladding may be used, thus making the cross section asymmetrical (col. 4 lines 4-23).

Claims 2, 4, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Muendel (US 5,533,163).

Regarding claim 2, Muendel discloses an article for gain application including a laser diode array, a double cladding fiber laser with the core doped with an active species, said fiber including an inner cladding, outer cladding, and inherently an aperture for allowing light to enter. There is a coupling optical system disposed between the laser diode array and the fiber to focus the beam from the array to the fiber. The cross sectional shape of the inner cladding is an asymmetric symmetry broken polygon.

Regarding claim 4, the symmetry broken cladding may be rectangular.

Regarding claim 7, Muendel discloses that the optical system may be an optical fiber laser.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muendel in view of Tankala et al. (US 6,477,307).

Muendel discloses an optical fiber having a core doped with an active species, an inner cladding surrounding the core, an outer cladding surrounding the inner cladding, where the cross sectional shape of the inner cladding is an asymmetric and-symmetry broken polygon. Muendel further discloses the limitations of claim 2 as shown above. It is not disclosed that at least one of the boundaries forming the polygon shape is an arc. Tankala teaches an optical fiber where a boundary of the cross section of the inner cladding is an arc. It would have been obvious to one skilled in the art to incorporate an arc in the boundary of the cross section of the inner cladding in order to enhance scattering of the pump radiation for more effective absorption of the core, as taught by Tankala (col. 2 lines 40-43).

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Muendel. Muendel discloses the system of claim 2 as shown above, but does not disclose that it may be an optical amplifier. It is well known that optical amplifiers may include means of coupling signals to be amplified into an active fiber. It would have been an obvious art known substitution for one

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skilled in the art to use the specific fiber disclosed by Muendel as the optical fiber of the optical amplifier.

Response to Arguments

Applicant's arguments that the Wang reference cannot be used in a 102(a) rejection is persuasive. The argument is made moot in light of the new rejections above.

Applicant's arguments regarding the figures are not persuasive. It does not matter if the Wang reference can be used as prior art. The specification clearly states that certain figures are prior art, thus it is deemed that only that which is old is illustrated.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James A. Menefee whose telephone number is (703) 605-4367. The examiner can normally be reached on M-F 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Ip can be reached on (703) 308-3098. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9318.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

JM
March 12, 2003


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